

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

HONORABLE BOYD W. DUNN

CLERK OF THE COURT

C. Towles

Deputy

IN RE THE MARRIAGE OF
VICKI MCMILLAN

VICKI MCMILLAN
10019 W KINGMAN ST
TOLLESON AZ 85353

AND

JEFFERY V BANKS

KAINE ROBERT FISHER

DOCKET-FAMILY COURT-SE
FAMILY COURT SERVICES-CCC

DECREE OF DISSOLUTION OF MARRIAGE

The Evidentiary Hearing in this matter was conducted on March 13, 2012. During the proceedings, the Court heard from the witnesses, including the parties. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments.

After significant deliberation, the Court makes the following findings and enters the following orders:

THE COURT FINDS as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.
- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

- C. The parties were married on December 15, 1998. By operation of law, the marital community is deemed to have terminated on January 25, 2011.
- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.
- E. There are three (3) minor children jointly adopted by the parties, namely: Tilar Banks (DOB: 07/30/1995), Jazmin Banks (DOB: 07/30/1995) and Branden Banks (DOB: 11/29/1999).
- F. Mother is not pregnant.
- G. This was not a covenant marriage.
- H. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of each spouse and the division of property and debts.

DISSOLUTION OF MARRIAGE

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person.

CUSTODY AND PARENTING TIME

Jurisdictional Findings

THE COURT FINDS that Mother and Father have three (3) jointly adopted minor children, namely: Tilar Banks (DOB: 07/30/1995), Jazmin Banks (DOB: 07/30/1995) and Branden Banks (DOB: 11/29/1999). The parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the “home state” of the minor children. See A.R.S. § 25-1031.

Best Interest Findings: A.R.S. § 25-403

The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403. The parties have stipulated to a finding that the agreed upon plan is in the best interests of the minor children.

THE COURT FINDS that there is no history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05) sufficient to preclude the award of sole legal custody as agreed.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

Legal Custody

THE COURT FINDS that that based on the above, it is in children's best interests that Father be awarded sole legal and physical custody of Tilar Banks (DOB: 07/30/1995), Jazmin Banks (DOB: 07/30/1995) and Branden Banks (DOB: 11/29/1999).

IT IS THEREFORE ORDERED awarding Father sole legal and physical custody of the parties' three minor children.

Custody Terms

Parental Access To Records And Information- Both parents are entitled to have equal access to documents and other information concerning each child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

Educational Arrangements- Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

Medical And Dental Arrangements- Both parents have the right to authorize necessary emergency medical/dental treatment and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child. Both parents shall cooperate on health matters pertaining to each child and shall keep one another reasonably informed regarding the status of each child's health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

Parental Communication- In furtherance of each child's best interests the parents shall confer and shall consider the views of each parent. The parents shall communicate to address day-to-day and more significant issues. The parents shall use e-mail as their primary method for communication. This method allows the parents to develop their communication and ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.

Relocation- Neither parent shall relocate the residence of the children outside of the state of Arizona or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move.

Mediation Or Conciliation Services- The parties shall participate in mediation through a private mediator or through this Court's Conciliation Services to resolve any disputes, problems or proposed changes regarding this child custody order or parenting time before seeking further relief from the Court.

Decision Making Authority- Parental decisions shall be required for major issues in raising the children and in meeting on-going needs. When they arise, each parent shall give good faith consideration to the views of the other and put forth best efforts to reach a consensus decision. If the decision involves medical or schooling issues, the parties may further elect to seek input from treating physicians or educators. Both parents shall be provided with such input. If they cannot agree, Father shall have the ability to make the final decision.

Parenting Time

Mother requests no parenting time but only telephonic access with the minor children at reasonable waking hours of reasonable duration.

IT IS ORDERED that Mother shall have no parenting time with the minor children unless approved by Father or modified by this Court.

IT IS FURTHER ORDERED that Mother shall have telephone access with the minor children at reasonable waking hours and duration.

CHILD SUPPORT

The parties reached agreements on the record regarding their respective gross monthly incomes for the calculation of child support. Accordingly, Father earns \$6,440.40 as gross monthly income and Mother earns \$39.24 per hour on a full-time basis, or gross earnings of \$6,801.50 per month. The parties also acknowledge that they have no daycare expenses. All three children are over the age of 12 years.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

THE COURT FINDS that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support.

IT IS THEREFORE ORDERED that Mother shall pay to Father as and for child support the sum of \$1,251.48 per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing April 1, 2012, by Income Withholding Order.

LET THE RECORD REFLECT the Income Withholding Order is initiated electronically by the above-named deputy clerk. Confirmation #373059.

IT IS FURTHER ORDERED that at any time an Income Withholding Order is not paying the child support obligation in full, Mother shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

All payments shall be made through the Support Clearinghouse via an automatic Income Withholding Order issued this date. Mother is advised that until such time as the Income Withholding Order becomes effective, Mother has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

Insurance and Unreimbursed Medical Expenses

The minor children have medical insurance coverage through AHCCCS based upon the fact that they were adopted as foster children and that such coverage should remain at no cost to the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

parents. All medical, dental, or orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid 50% by Father and 50% by Mother.

IT IS ORDERED that unless good cause is shown, any request for payment or reimbursement of uninsured medical, dental, and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Taxes and Deductions for the Children as Dependents

IT IS ORDERED that pursuant to the agreement of the parties, separate Federal and State income tax returns shall be filed by the parties beginning with tax year 2012 and each year thereafter.

IT IS FURTHER ORDERED that pursuant to the stipulation of the parties, Father shall have the right to claim all three (3) minor children, if eligible, as tax exemptions on his Federal and State income tax returns each year commencing tax year 2012, subject to future modification by this Court.

Exchange Of Income Information

IT IS ORDERED that the parties shall exchange income information every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

SPOUSAL MAINTENANCE

Neither party has asked for spousal maintenance under A.R.S. § 25-319(A).

IT IS THEREFORE ORDERED that neither Father nor Mother is awarded spousal maintenance.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

DIVISION OF PROPERTY AND DEBTS

Community/Sole and Separate Property Claims and Debts

The Court shall divide any disputed property in accordance with the property's character. Property is characterized by the time of its acquisition. If acquired by either spouse before marriage or acquired during marriage by gift, devise, or descent, property is characterized as separate property. A.R.S. § 25-213(A). The Court shall assign each spouse's sole and separate property to that spouse. A.R.S. § 25-318(A).

Property acquired by either spouse during marriage is characterized as community property (with the exceptions of property acquired by gift, devise, or descent). A.R.S. § 25-211(A). There is a presumption that any property acquired by either spouse during marriage is community property, unless demonstrated otherwise by clear and convincing evidence. *See Sommerfield v. Sommerfield*, 121 Ariz. 575, 578, 592 P.2d 771, 774 (1979). Any property acquired by either spouse outside of Arizona shall be deemed to be community property if such property would have been characterized as community property had it been initially acquired in Arizona. A.R.S. § 25-318(A).

Equitable Division

The Court shall divide community property equitably, although not necessarily in kind, without any regard to marital misconduct. A.R.S. § 25-318(A). As a general presumption, equitable division requires that community property be divided substantially equally. *See Toth v. Toth*, 190 Ariz. 218, 221, 946 P.2d 900, 903 (1997). However, the court may order an unequal division of community property in consideration of excessive or abnormal expenditures or the destruction, concealment, or fraudulent disposition of property. A.R.S. § 25-318(C).

When dividing property, the Court may consider all related debts and obligations. A.R.S. § 25-318(B). To determine property's value, the court shall select a valuation date. The selection of this valuation date rests within the wide discretion of the trial court and shall be tested upon review by the fairness of the result. *See Sample v. Sample*, 152 Ariz. 239, 242-43, 731 P.2d 604, 607-08 (Ct. App. 1986).

Real Property

The parties own a parcel of real property as a community asset located at 6085 North 85th Avenue, Glendale, Arizona 85305. This property served as the parties' marital residence. The deed is in both parties names but Father is the only one responsible on the mortgage obligation.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

Testimony was given at the time of trial that the residence has a current value of approximately \$226,000.00 and that there is a mortgage associated with the residence with a balance owed of \$414,908.16 as of July 1, 2011. Consequently, there appears to be a negative equity in the real property amounting to approximately \$189,000.00. No evidence was presented to the Court at the time of trial to counter these figures.

Mother testifies and agrees that the marital residence currently has no value. Nonetheless, Mother wishes to have Father “buy out” her interest in the amount of \$50,000.00 with payments being made of \$2,000.00 per month. At full payment, Mother would sign a quit claim deed transferring full ownership to Father.

Father also testified that he has recently refinanced the mortgage obligation on the residence because he fell behind on the mortgage payments and in order to take advantage of significantly lower interest rates. Father testified the mortgage is now a recourse loan not subject to Arizona’s anti-deficiency protections as a result of the refinancing in 2011. The refinancing did not affect the negative equity in the residence and that Father is willing to remain totally liable for any deficiency upon a short-sale.

THE COURT FINDS based upon the testimony given at the time of trial, that no equity exists in the residence as a community asset and that Father remains solely responsible as to the mortgage existing thereon.

IT IS ORDERED granting to Father full ownership in the real property located at 6085 North 85th Avenue, Glendale, Arizona 85305. Mother shall sign a quit claim deed granting full ownership to Father regarding said property within thirty (30) days of the filing date of this decree.

IT IS FURTHER ORDERED that Father shall fully pay and hold Mother totally harmless from all obligations existing on the marital residence including the mortgage obligation for said property.

Personal Property

IT IS ORDERED that Father shall be awarded full ownership of the 1993 Chevrolet Suburban and that Mother shall be awarded full ownership of the 2002 Ford Expedition. Both parties have acknowledged that there exists no liens on said property but in the event that there is any remaining lien or obligation, the party who has been awarded the ownership of the vehicle shall fully pay said obligation and hold the other totally harmless therefrom.

IT IS FURTHER ORDERED Father is awarded as his sole and separate property all household furniture, furnishings and appliances, and other personal property currently in his

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

possession with the exception of the jet ski and trailer and Christmas decorations which shall be awarded to Wife and delivered to her no later than fifteen (15) days from the filing date of this decree.

IT IS FURTHER ORDERED Mother is awarded as her sole and separate property all furniture, furnishings and appliances, and other personal property currently in her possession, including those remaining items to be delivered to her as ordered herein.

Retirement Accounts

The parties provided testimony regarding the existence of several retirement accounts from several sources including Safeway, Teamsters, and Mother's employment with Tolleson Union High School with an Arizona state retirement. The parties agree that the portions of said deferred benefits earned during the parties' years of marriage represent community interests requiring division. The parties were unable to allocate these retirement accounts outside of actual division.

THE COURT FINDS that a division of the community interests in said retirement accounts is necessary and that Qualified Domestic Relations Orders shall be prepared in order to do so.

IT IS ORDERED that all retirement plans or other deferred benefit accounts existing during the parties' marriage shall be divided by means of a Qualified Domestic Relations Order. The parties shall determine the name of an attorney to proceed in preparation of such orders and the parties shall equally pay the costs in their preparation. The Court retains jurisdiction regarding the division of all retirement accounts owned by the parties.

Debts

IT IS ORDERED that Father shall fully pay and hold Mother totally harmless from the debts and obligations listed in his Affidavit of Financial Information dated August 8, 2011, including: the previously identified mortgage obligation on the marital residence and the obligations with Sears, Chase Visa, Chase MasterCard, Capital One, Teamsters, Bank of America Visa, and Father's student loans with Sallie Mae.

IT IS FURTHER ORDERED that Mother shall fully pay and hold Father totally harmless from the debts and obligations as listed on her Affidavit of Financial Information dated September 10, 2011, including: the IRS overpayment of 2010 and Mother's student loans with Student Services.

IT IS FURTHER ORDERED that each party shall additionally fully pay and hold the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

other totally harmless from any and all other debts and obligations incurred by either party since the date of filing of the Petition for Dissolution of Marriage.

RESTORATION OF NAME

Petitioner/Mother asked on the record to have her name restored.

IT IS THEREFORE ORDERED restoring Petitioner/Mother to her former name, Vicki McMillan (DOB: 09/11/1956).

ATTORNEY FEES AND COSTS

Father has requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. Section 25-324 provides as follows:

A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

THE COURT FINDS that there is no substantial disparity of financial resources between the parties.

THE COURT FURTHER FINDS that Mother has acted unreasonably in the litigation by being evasive and non-compliant regarding her discovery/disclosure obligations, by refusing to comply with the Court's drug testing orders, and by refusing to enter into good faith settlement discussions until the time of trial and after drug testing results were disclosed.

THE COURT FURTHER FINDS that the provisions of A.R.S. § 25-324(B) apply because the above enumerated actions has caused additional and unnecessary attorney fees and costs be incurred by Father in bringing this matter to final trial and that Father deserves a contribution to his reasonable fees and costs.

IT IS THEREFORE ORDERED awarding to Father and against Mother the amount of \$5,000.00 toward Father's reasonable attorney's fees and costs incurred in this action.

IT IS FURTHER ORDERED judgment is rendered against Mother and in favor of Father in the amount of \$5,000.00, earning interest as allowed under Arizona law.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

FILED: Child Support Worksheet and Exhibit Worksheet.

05/14/2012

/S/ HON. BOYD W. DUNN

Date

The Honorable Boyd W. Dunn
Judge of the Superior Court

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-090306

05/14/2012

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

VICKI MCMILLAN: Non IV-D Payment Instructions